

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Crystal E. Rosales

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Civil Action No.

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V

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5:19-cv-1255

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Rausch, Sturm, Israel, Enerson,
& Hornik, LLP and Portfolio
Recovery Associates, LLC

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Plaintiff's Original Complaint

Introduction

1. The Fair Debt Collection Practices Act was enacted to stop debt collectors from harassing, abusing, and making misrepresentations to and about consumers. Congress found that these practices led to job loss, the number of personal bankruptcies, invasions of privacy, and marital instability.
2. The FDCPA regulates communications by debt collectors. It prohibits debt collectors from contacting a consumer it knows is represented by counsel, 15 U.S.C. § 1692c(a)(2). It also prohibits debt collectors from making false representations, 15 U.S.C. § 1692e and e(10).
3. Plaintiff brings this action against Defendants for their violations of the FDCPA and seeks actual damages, statutory damages, costs, and reasonable attorney's fees.

Jurisdiction & Venue

4. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
5. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

Parties

6. Plaintiff, Crystal E. Rosales, is a natural person who resides in and has resided in San Antonio, Bexar County, Texas at all times relevant to this action.
7. Defendant, Rausch, Sturm, Israel, Enerson, & Hornik, LLP, ("Rausch Sturm") is a Wisconsin Limited Liability Partnership whose principal business address is 250 N. Sunnyslope Road, Suite 300, Brookfield, WI 53005. It may be served with process via its registered agent Michael Garza at 15660 Dallas Pkwy, Suite 350, Dallas, Texas 75248.
8. Rausch Sturm is a law firm that collects consumer debts via pre-litigation, litigation, post-judgment collection efforts throughout the United States.
9. Defendant, Portfolio Recovery Associates, LLC, ("PRA") is a Delaware Limited Liability Company whose principal business address is 120 Corporate Blvd, Norfolk, VA 23502. It may be served with process via its registered agent Corporation Services Company d/b/a CSC-Lawyers Inc. at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Facts

10. PRA and Rausch Sturm regularly collect or attempt to collect, directly or indirectly debts owed or asserted to be owed to another.
11. The principal purpose of PRA and Rausch Sturm is the collection of charged-off debts.
12. The debt at issue in this action is a defaulted debt that Rosales used for personal, family, and household purposes (the “Debt”).
13. PRA retained Rausch Sturm to collect the Debt.
14. Rausch Sturm filed suit in Bexar County Court at Law # 10 in Cause No. 2019CV01350; *Portfolio Recovery Associates LLC vs Crystal Rosales*.
15. Rosales hired undersigned counsel who filed an answer on or about February 20, 2019.
16. Rausch Sturm sent a collection letter on September 26, 2019 even though it knew or should have known Rosales was represented by counsel.
17. A true and correct copy of the collection letter is attached as Exhibit A, except that it has been redacted per Fed. R. Civ. P. 5.2.
18. Rausch Sturm filed a motion for default judgment on September 11, 2019.
19. In its motion for default judgment, Rausch Sturm misstated that Rosales had not filed an answer, when in fact an answer was on file.

20. A true and correct copy of the motion for default judgment is attached as Exhibit B.
21. A true and correct copy of the court's docket is attached as Exhibit C.
22. The court granted the default judgment on September 25, 2019.
23. PRA and Rausch Sturm's misrepresentations caused Rosales to suffer actual damages.

First Cause of Action – Fair Debt Collection Practices Act against Rausch Sturm

24. Rausch Sturm is a debt collector as defined by 15 U.S.C. § 1692a(6).
25. The Debt is a debt as defined by 15 U.S.C. § 1692a(5).
26. Rosales is a consumer as defined by 15 U.S.C. § 1692a(3).
27. The motion for default judgment and the collection letter are communications as defined by 15 U.S.C. § 1692a(2).
28. Rausch Sturm's communications violated the FDCPA in that they:
 - a. Were made to a consumer Rausch Sturm knew was represented by an attorney and could readily ascertain such attorney's name and contact information in violation of 15 U.S.C. § 1692c(a)(2);
 - b. Misstated that Rosales had not filed an answer, when in fact she had, a false representation in violation of 15 U.S.C. § 1692e and e(10).

29. Rausch Sturm's misrepresentations invaded Rosales rights as protected by the Fair Debt Collection Practices Act.

Second Cause of Action – Fair Debt Collection Practices Act against Portfolio Recovery Associates, LLC

30. Portfolio Recovery Associates, LLC is a debt collector as defined by 15 U.S.C. § 1692a(6).

31. The Debt is a debt as defined by 15 U.S.C. § 1692a(5).

32. Rosales is a consumer as defined by 15 U.S.C. § 1692a(3).

33. The collection letter and default judgment motion are communications as defined by 15 U.S.C. § 1692a(2).

34. Portfolio, as a debt collector, is responsible for the acts of Rausch Sturm, its agent. *See McWilliams v. Advanced Recovery Sys., Inc.*, 174 F. Supp. 3d 936, 942 (S.D. Miss. 2016) (quoting *Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 404 (3d Cir. 2000)); *see also Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 325 (7th Cir. 2016); *Hordge v. First Nat'l Collection Bureau, Inc.*, CIVIL ACTION NO. 4:15-CV-1695, at *9 (S.D. Tex. Aug. 7, 2018).

35. Rausch Sturm, as PRA's agent violated the FDCPA as set out *supra*.

Jury Demand

36. Plaintiff demands this case be tried before a jury.

Prayer for Relief

Plaintiff prays, that this Court enter judgment against Defendant and in favor of Plaintiff for:

- a. Actual damages per 15 U.S.C. § 1692 k(a)(1);
- b. Statutory damages per 15 U.S.C. § 1692k(a)(2); and
- c. Attorney's fees, costs, and litigation expenses per 15 U.S.C. § 1692 k(a)(3).

Dated: October 23, 2019

Respectfully Submitted,

/s/William M. Clanton
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